

it is reasonably clear that if this had been an ordinary banking account the right to this sum of money would have passed at law to the survivor in the event of the death of one of the named persons and not to the personal representatives of the deceased, and further, in the circumstances of this case, there would in the ordinary way be no question of a resulting trust. The doctrine of resulting trusts has been applied in this Colony. I regard this as a misfortune. The rules as applied in England may have been in accordance with conditions that prevailed in England in the time of the first Queen Elizabeth but they have long since become merely arbitrary and I do not think that they have ever had any relation to conditions in this Colony. It is probably too late to do anything about it.

There are juristic difficulties in considering what happens when money is paid by anyone into the banking account of another. The resulting chose in action is a right in contract by that other person against the bank. This involves questions of agency and if the payment was not made at the invitation of the other person ratification is necessary to complete the cause of action. However, the thing is so commonly done that in the normal course of events there is no difficulty in assuming these things though they do not occur to those who are not lawyers. To the lay mind, no doubt, the whole thing appears as simple as dropping a coin into a money box.

In the present case the difficulties arise from the form of the receipt issued, in particular, from the words "or bearer". The learned Judge who heard the matter at first instance held that this document was a bearer security and that the title was in the holder who was the testator and that the appellant never had any rights in it either at law or in equity. I do not agree with this. This document was not negotiable and it could not be assigned at law by mere delivery. Parties cannot by contract make a chose in action negotiable, nor can they create a chose in action which is assignable other than in accordance with the statute. Delivery would at most operate as an equitable assignment and an assignee could only sue the bank in his own name after the procedure required by statute for the legal assignment of a chose in action had been completed. I think that the words "or bearer" merely have the effect of excusing payment by the bank to a holder unless they have had a contrary direction from the depositors. If the document got lost the depositors could require payment without its production and without giving an indemnity. In my opinion this document is not a security or a document of title but a mere receipt. I think, therefore, that we must deal with this transaction as we would with any other deposit in a bank. In the

circumstances it appears to belong to the appellant and the appeal should be allowed.

Costs to be reserved.

Storr, J.: — I agree. The main question to be considered in this appeal is whether the words "or bearer" added to the names of the testator and appellant had any bearing on the nature of the document. The learned trial Judge came to the conclusion that such words turned the document into a bearer security, with which conclusion I am unable to agree, because had they done so, the issuing bank would have been infringing section 8(1) of the Currency Ordinance, 1938.

I agree with the learned President that all that the words "or bearer" did was to permit the bank to pay a holder unless they had received contrary directions from the named depositors. From the facts in this case there is little doubt in my mind that the testator intended this \$100,000 to be a gift to the appellant so as to bring him on the same footing as his brothers.

The deposit receipt in this case, being in the joint names of the testator and the appellant and the testator having died, now belongs, in my opinion, to the survivor, the appellant. I would allow the appeal.

The question of cost has been reserved.

Whitton, J., concurred.

Appeal allowed.

CHENG LAN LIM & ORS.

v.

HOE CHENG HIN & ORS.

[C. A. (Murray-Aynsley, C.J., Brown and Storr, JJ.)
August 6, 1953]

[Singapore — Civil Appeal No. 5 of 1953]

*Landlord and tenant — Partnership assets —
Position of a statutory tenant — Control of Rent
Ordinance, 1947, s. 16 — Sale of tenancy and appoint-
ment of receivers.*

The appellants (defendants) appealed against the decision of the learned trial Judge who adjudged that the tenancy of the premises known as No. 107, Marine Parade, Singapore, was a partnership asset of the Katong Rest House and that the said tenancy be put up for sale on terms and conditions to be fixed by the Registrar, the purchase to be restricted to the owner of the premises or the 1st defendant and that Messrs. Cheong Koon Seng & Co., Ltd., be appointed Receivers of the said partnership business known as the Katong Rest House, such appointment to be suspended provided Notice of Appeal is given within three weeks from the date of the said Judgment.

Held: (1) the first appellant being a statutory tenant is entitled to the personal protection of the Control of Rent Ordinance so long as he is in occupation; (2) the statutory tenancy cannot be a partnership asset.

Cases referred to:—

- (1) *Sutton v. Dorf* (1932) 2 K.B. 304 at pp. 306—307.
- (2) *Nunn v. Pellegrini* (1924) 1 K.B. 685.
- (3) *Roe v. Russell* (1928) 2 K.B. 117.
- (4) *Keeves v. Dean* (1924) 1 K.B. 685.

CIVIL APPEAL.

R. L. Eber for the appellants.

C. H. Smith for the respondents.

Cur. Adv. Vult.

Murray-Aynsley, C.J.:—This litigation arose out of the occupation of premises known as the Katong Rest House for business purposes.

Originally the parties had carried on a business as partners there. At present the first appellant (1st defendant) is in sole occupation of the premises and is a statutory tenant under section 16 of Ordinance No. 25 of 1947. Formerly there was a contractual tenancy held by the first appellant. It is very probable that this contractual tenancy was a partnership asset. The learned Judge in the Court below held that the statutory tenancy was a partnership asset and made the following order:—

"2. That the tenancy of the premises known as No. 107, Marine Parade Singapore was at all material times a partnership asset of the said partnership.

"3. That the tenancy of No. 107, Marine Parade, Singapore, be put up for sale on terms and under conditions to be fixed by the Registrar, the purchase to be restricted to the owner or the first defendant.

"4. That Cheong Koon Seng & Company Limited of Nos. 8 and 10 Chulia Street, Singapore, be and are herein appointed receivers of the assets of the said partnership business known as the Katong Rest House but such appointment is to be suspended provided notice of appeal is given within three weeks of the date."

There are two things to be considered—the declaration that the tenancy is a partnership asset and the consequential orders by which the learned Judge attempted to give effect to the rights of the parties in the view of that declaration.

Even if the statutory tenancy were a partnership asset I think that 3 and 4 cannot be supported, 4, because the appointment of a receiver, who would not enjoy the protection of the Ordinance, would destroy the asset without benefitting the partners as such; 3, because I think it would be nugatory. If the owner of the property were to make the highest bid at the auction it would not entitle her to possession unless the first appellant gave notice to quit or did something else which deprived him of his privileges. The first appellant is given certain privileges by statute. I do not think that the Courts can either directly or indirectly deprive him of these privileges otherwise than as provided by the statute.

To deal with a mere fundamental aspect of the case, it is necessary to consider whether a statutory tenancy can be a partnership asset at all, particularly when the partnership business is no longer carried on in the premises. The Ordinance only protects occupation; the respondents do not occupy the premises, the first appellant does. To treat the statutory tenancy as a partnership asset would be to cause rights given to protect occupation to ensure for the benefit of those who do not occupy. To treat the rights of the first appellant as belonging in equity to all the former partners would involve changing the nature of the rights created by the statute and, in my opinion, this cannot be done.

I think that the appeal must be allowed with costs here and below, deposit to appellants.

Brown, J.:—Apart from the question of the first appellant's position as a statutory tenant, I should have some difficulty in accepting that, if the tenancy was still a contractual tenancy, it could be a partnership asset after the partnership was dissolved. Whatever may be the meaning of Clause 3 of partnership agreement, it was never implemented and the plaintiffs, in conjunction with the owner of the premises, have throughout acted as if the first appellant had the sole interest in the tenancy and have combined in their efforts to get him out. The evidence shews that the first appellant has all along refused to transfer these premises to the partnership and has resisted making them a partnership asset.

But the first appellant is now a statutory tenant and entitled to the personal protection of the Rent Ordinance. It is a protection which is personal to him so long as he is in occupation. I think that when the effect of the consequential orders 3 and 4 which were made by the learned Judge are considered, it becomes clear that a statutory tenancy cannot be a partnership asset because the effect of those orders must be inconsistent with the statutory protection which the Ordinance gives to the first appellant.

I would allow the appeal costs here and in the Court below.

Storr, J.:—I agree. The only question to be decided here is whether even if the contractual tenancy was a partnership asset (and the learned trial Judge has so found) the statutory tenancy now held by the appellants also becomes a partnership asset.

In *Sutton v. Dorf*⁽¹⁾, a case where the Trustee in Bankruptcy claimed a statutory tenancy as "property" of the bankrupt, Acton, J., reviewing the authorities relating to the rights of statutory tenants, says:—

"In *Nunn v. Pellegrini*⁽²⁾, it was decided that the right of a statutory tenant is merely a personal right

to retain possession of the premises, and cannot be assigned. In *Roe v. Russell*⁽³⁾, it was decided that a statutory tenant could not assign or sub-let his tenancy of the whole of the premises, whether for value or not And in *Keeves v. Dean*⁽⁴⁾, Bankes, L.J. said: 'His right is a purely personal one, and as such, unless the statute expressly authorises him to pass it on to another person, must cease the moment he parts with the possession or dies'";

and he held in that case that a statutory tenancy is not "property" within section 167 of the Bankruptcy Act, 1914, which is equivalent to section 2 of our Bankruptcy Ordinance. It seems to me therefore that if a statutory tenancy is not to be considered "property" or an asset of a bankrupt statutory tenant, it cannot be considered as an asset of the partnership in the present case.

I would allow the appeal with costs here and below.

Appeal allowed.

LIM KEE BUTT v. PUBLIC PROSECUTOR

[A. Cr. J. (Bellamy, J.): August 13, 1953]

[Malacca — Criminal Appeal No 10 of 1953]

Penal Code, s. 409 — Criminal Breach of Trust by public servant — Circumstances under which a Government servant is considered a public servant within the meaning of s. 21 Penal Code.

The appellant had been convicted of Criminal Breach of Trust as a public servant. He was a temporary Government clerk employed in a Police Station and was found to have received money from persons who tendered composition for alleged traffic offences under the Emergency (Compounding of Traffic Offences) Regulations 1948. The important point raised in this appeal was whether a Government servant is necessarily a public servant within the meaning of section 21 of the Penal Code.

Held: unless the appellant comes within the description "officer" in the service or pay of Government", he is not a public servant. To be an officer he should have in some degree delegated to him certain functions of Government. The only person vested with authority to compound offences or to receive payments in composition under the Emergency (Compounding of Traffic Offences) Regulation 1948, are the Chief Police Officer and any other police officer authorised by him in writing. The appellant was not a police officer nor was he authorised to reserve composition money. He was therefore not an 'officer' in the service or pay of Government within the meaning of section 21 Penal Code.

Cases referred to:—

- (1) *Regina v. Ramajirav Jivbajirav* (1875) 12 Bom. H.C.R. 1.
- (2) *Ahad Shah v. Emperor* (1948) A.I.R. Lahore 152.
- (3) *Rex v. Robinson* (1917) 2 K.B. 108.

CRIMINAL APPEAL.

C. S. Jayaswal for the appellant.

L. A. Massie (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Bellamy, J. : — The appellant, who was at all material times a temporary clerk in the service of Government and was employed as such in the office of the Police Station at Jasin, was charged before the President of the Sessions Court at Malacca under section 409 of the Penal Code with having committed criminal breach of trust, as a public servant, of sums totalling \$70 being cash received by him between the period from 21st January, 1952 to 1st January, 1953 in the office of the police station from persons suspected of having committed traffic offences who tendered the amounts in payment of offers of composition made under the provisions of the Emergency (Compounding of Traffic Offences) Regulations, 1948. He was found guilty as charged, convicted and sentenced to one month's imprisonment and to a fine of \$100. He now appeals against both conviction and sentence.

The first question which I have to consider on this appeal is whether the appellant was at the material time a public servant. It is, I think, evident from the decision of the learned President to convict the appellant under section 409 of the Penal Code that he was of opinion that the appellant was a public servant. He gives no reason for his opinion in his grounds of decision. He does, however, refer to the appellant as being a "Government servant", and I can only assume that, if he gave this aspect of the case any attention at all, he held that the appellant was a public servant within the meaning of section 21 of the Penal Code by reason of that fact. In my opinion, he was wrong in this view.

Section 21 of the Penal Code sets forth the description of persons who are "public servants" within the meaning of the Penal Code. I think that it must be conceded that, unless the appellant comes within the description "officer in the service or pay of Government" to be found at the end of the ninth clause of that section, he is not a public servant. That the appellant was in the service and in the pay of Government there is no question; but was he an "officer"? The meaning of the term "officer" in section 21 of the Indian Penal Code, which is in *pari materia* with section 21 of the local Penal Code, was considered by the learned Judges in the case of *Regina v. Ramajirav Jivbajirav*⁽¹⁾, where West, J. observed:—

"An officer is one to whom is delegated, by the supreme authority, some portion of its regulating and coercive powers, or who is appointed to represent the State in its relations to individual subjects. This is the central idea; and applying it to the clause which we have to construe, we think that the word 'officer' there means some person employed to exercise to some extent and in certain circumstances, a delegated function of Government. He is either himself armed with some authority or representative character, or his duties are immediately auxiliary to those of some one who is so armed."